

WILLIAM J. KROETCH

IBLA 81-542

Decided August 6, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring mining claims abandoned and void. I MC 41982 through I MC 41987.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

The mailing of a notice of intention to hold a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

APPEARANCES: Tom P. May, Esq., Spokane, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

William J. Kroetch has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated March 20, 1981, declaring the Little Wallace Nos. 1 through 6 mining claims, I MC 41982

through I MC 41987, abandoned and void for failure to file timely either evidence of annual assessment work or notices of intention to hold the claims on or before December 30, 1980, pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

Appellant's mining claims were located in August and September 1979 and filed for recordation with BLM on October 19, 1979. There is no evidence that appellant filed either evidence of annual assessment work or notices of intention to hold the claims with BLM on or before December 30, 1980.

In his statement of reasons for appeal, appellant contends that "[s]ufficient assessment work was completed by September 1, 1980," but that due to "pressing personal circumstances" an affidavit of assessment work could not be filed and that "on or about September 15, 1980" he mailed a "Notice of Intention To Hold Claim" to BLM. Appellant argues that he should not be penalized because the notice "was not delivered by the United States mails or because [it] * * * was misplaced by the Bureau of Land Management."

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), and the pertinent regulation, 43 CFR 3833.2-1(c), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the claim. Failure to file the required instrument is deemed conclusively to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

[2] The mailing of a notice of intention to hold or evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date. The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Moreover, there is a presumption of regularity which attends the official acts of public officers in the proper discharge of their official duties. This presumption is rebuttable by a clear and convincing showing amounting to a preponderance of the evidence. L. E. Garrison, 52 IBLA 131 (1981). Appellant has not presented such evidence as would establish that BLM misplaced his notice of intention to hold and would support a finding that the document was indeed timely filed. See Bernard J. Braker, 54 IBLA 332 (1981).

In the absence of evidence that BLM did receive timely either evidence of annual assessment work or notices of intention to hold the claims, BLM properly declared the claims abandoned and void. Robert R. Eisenman, 50 IBLA 145 (1980). The Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

